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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|------------------------------|---------------------|------------------|
| 10/649,490 | 08/27/2003 | Patricia L. Herzog-Mesrobian | 773.003 | 5870 |

23598 7590 02/24/2005

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EXAMINER

GELLNER, JEFFREY L

| ART UNIT | PAPER NUMBER |
|----------|--------------|
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3643

DATE MAILED: 02/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/649,490

Applicant(s)

HERZOG-MESROBIAN ET AL.

Examiner

Jeffrey L. Gellner

Art Unit

3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 December 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-75 is/are pending in the application.
- 4a) Of the above claim(s) 12-15, 28, 34, 35, 37-56, 58, 71 and 74 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11, 16-27, 29-33, 36, 57, 59-70, 72, 73 and 75 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 27 August 2003.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Acknowledgement is made of Applicant's IDS received 27 August 2003.

Election/Restrictions

Applicant's election without traverse of Invention I - Species A (Figs. 1-5) in the reply filed on 14 October 2004 is acknowledged. Claims 12-15, 28, 34, 35, 37-40, 42, 43, 46, 49-52, 54-56, 58, 71, and 74 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to nonelected inventions and claims 41, 44, 45, 47, 48, and 53 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 14 October 2004 with a second response received 2 December 2004.

Claim Objections

Claims 2, 17, 31-33, 68, 72, 73, and 75 are objected to because of the following informalities:

In claim 2, Examiner does not consider a "means for applying an ornamentation" to be a "removable film" because a "removable film" is a structural limitation. That is, the "removable film" appears to be an ornamentation.

In claim 17, the language "second and third direction" is unclear because there is no first direction. Perhaps the claim should depend upon claim 16 and not claim 1.

In claims 31-33, the limitation "the vessel" lacks antecedent basis.

In claim 68 the "slip" is perhaps --clip-- which lack antecedent basis.

In claims 72 and 73, the limitation "said profile" lacks antecedent basis.

In claim 75, the limitations "said contracted arc," "said first arc," "said extended arc," and "said extended arc" lacks antecedent bases.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 57 is rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 57, the method step of lines 3-5 render the claim indefinite because method steps can be part of an apparatus claim.

Claim Rejections - 35 USC §103

The following is a quotation of 35 U.S.C. §103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3-5, 8, 9, 16-18, 23, 24, 27, 29-33, 36, 57, 59-70, 72, 73, and 75 are rejected under 35 U.S.C. §103(a) as being unpatentable over Herzog-Mesrobian et al. (US 6,108,974; 3rd document listed on Applicant's 1449) in view of Kato (JP5-219837).

As to claims 1, 29, and 30, Herzog-Mesrobian et al. discloses an apparatus Figs. 1-43) for containing a plant comprising a sleeve (Figs. 1-5 and 22-24); a means for securing the sleeve to a vessel (friction fit from fabric used at col. 3 lines 7-10). Not disclosed is a means for applying ornamentation to the sleeve. Kato, however, discloses a means for applying ornamentation to a floral sleeve ("pasting" of abstract in English is taken to be equivalent to "glue" of page 8, line 14, of Applicant's specification) with text Fig. 3). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the apparatus of Herzog-Mesrobian et al. by adding a ornamentation with a means of applying an ornamentation as disclosed by Kato so as to communicate emotion or advertisement (see abstract in English of Kato).

As to claims 3 and 4, Herzog-Mesrobian et al. as modified by Kato further disclose a pot or a saucer (Figs. 1 and 2).

As to claim 5, Herzog-Mesrobian et al. as modified by Kato further disclose a top portion (region around 70 of Fig. 5 of Herzog-Mesrobian et al.) and a bottom portion (72 of Fig. 2 of Herzog-Mesrobian et al.).

As to claims 8 and 9, Herzog-Mesrobian et al. as modified by Kato further disclose a sleeve with two ends and a zipper fastener (Fig. 22 of Herzog-Mesrobian et al.).

As to claim 16, Herzog-Mesrobian et al. as modified by Kato further disclose the sleeve stretchable in a direction (col. 2 lines 54-65 of Herzog-Mesrobian et al.).

As to claim 17, Herzog-Mesrobian et al. as modified by Kato further disclose the sleeve stretchable in two directions (col. 2 lines 54-65 of Herzog-Mesrobian et al.).

As to claim 18, Herzog-Mesrobian et al. as modified by Kato further disclose a polyurethane coating (col. 3 lines 7-20 of Herzog-Mesrobian et al.).

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As to claim 23 and 24, Herzog-Mesrobian et al. as modified by Kato further disclose a text message of a company with logo (inherent in “advertisement” of abstract in English of Kato).

As to claim 27, the limitations of Claim 1 are disclosed as described above. Not disclosed is the ornamentation a photo. It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the apparatus of Herzog-Mesrobian et al. as modified by Kato by adding a photo to the ornamentation so as to meet consumer demand.

As to claim 31, Herzog-Mesrobian et al. as modified by Kato further disclose a vessel made of clay (in that “standard sized” pots are clay of col. 2 lines 64-66 of Herzog-Mesrobian et al.).

As to claims 32 and 33, Herzog-Mesrobian et al. as modified by Kato further disclose the sleeve fitting around a pot (Figs. 1 and 2 of Herzog-Mesrobian et al.) and elastic (col. 2 lines 44-45 of Herzog-Mesrobian et al.).

As to claim 36, Herzog-Mesrobian et al. as modified by Kato further disclose the sleeve with horizontal inner lips at the upper and lower portions (70 and 72 of Figs. 2 and 5 of Herzog-Mesrobian et al.).

As to claim 57, the limitations of Claim 33 are disclosed as described above. Not disclosed is the sleeve holding pieces of the pot assembled condition and the method of repairing cracks by pulling away the sleeve. It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the apparatus of Herzog-Mesrobian et al. as modified by Kato by using cracked pots so as to recycle material and to repair cracked pots so as to recycle material.

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As to claim 59, Herzog-Mesrobian et al. as modified by Kato further disclose the sleeve with a hoop direction and an axial direction and axial edges (Figs. 22-26 of Herzog-Mesrobian et al.).

As to claim 60-64, Herzog-Mesrobian et al. as modified by Kato further disclose the sleeve stitched together (Fig. 22 of Herzog-Mesrobian et al.), releasably attached with a zipper (Fig. 23 of Herzog-Mesrobian et al.), and hook and loop (Fig. 24 of Herzog-Mesrobian et al.) with a liner (Fig. 25 of Herzog-Mesrobian et al.).

As to claims 65 and 66, Herzog-Mesrobian et al. as modified by Kato further disclose an upper circumferential reach wedged between sleeve (Fig. 25 of Herzog-Mesrobian et al.) and attached to the upper portion (Fig. 25 of Herzog-Mesrobian et al.).

As to claims 67 and 68, Herzog-Mesrobian et al. as modified by Kato further disclose as sleeve with a clip (Fig. 26 of Herzog-Mesrobian et al.).

As to claims 69 and 70, Herzog-Mesrobian et al. as modified by Kato further disclose an inner lip with circumferential rim and fold back portion (Figs. 27-30 of Herzog-Mesrobian et al.).

As to claims 72 and 73, Herzog-Mesrobian et al. as modified by Kato further disclose the profile being frustconically upwardly with width D1 and D1 greater than KXA; downwardly with width D2 and D2 less than KxB (col. 6 lines 25-51 of Herzog-Mesrobian et al.); and the additionally extending profile by extending D1 and D2 left-right (col. 6 lines 25-51 of Herzog-Mesrobian et al.).

As to claim 75, Herzog-Mesrobian et al. as modified by Kato further disclose the contracted arc parallel to the first arc and the extended arc parallel to the second arc (col. 7 lines 43-44 of Herzog-Mesrobian et al.).

Claims 2, 6, 7, 10, 11, 19-22, 25, and 26 are rejected under 35 U.S.C. §103(a) as being unpatentable over Herzog-Mesrobian et al. (US 6,108,974) in view of Kato (JP5-219837) in further view of Gilbert (US 6,505,425 B1).

As to claims 2, 6, and 7, the limitations of Claim 1 are disclosed as described above. Herzog-Mesrobian et al. as modified by Kato further disclose the means for securing as a fastener (74 of Fig. 5 of Herzog-Mesrobian et al.). Not disclosed is the means for applying ornamentation being a easily removable film with indicia. Gilbert, however, discloses a easily removable film (18 of Figs. 1 and 2; col. 4 lines 21-24) with indicia. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the apparatus of Herzog-Mesrobian et al., as modified by Kato, by using the film of Gilbert so that a sticker could be used that does not need a welding on one surface (see Gilbert at col. 4 lines 6-10).

As to claims 10 and 11, Herzog-Mesrobian et al. as modified by Kato further disclose indicia a holiday (see Figs. 1 and 2 of Gilbert) or advertising (col. 2 lines 12-19 of Gilbert).

As to claims 19-21, 25, and 26, Herzog-Mesrobian et al. as modified by Kato and Gilbert further disclose the indicia relating to a holiday which is a special event for a particular person (Figs. 1 and 2 of Gilbert for Valentine's Day).

As to claim 22, Herzog-Mesrobian et al. as modified by Kato and Gilbert further disclose a text message of a company (col. 2 lines 12-20 of Gilbert in that inherent in advertisement).

Conclusion

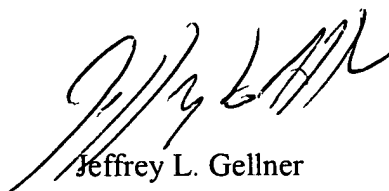
The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Nurse disclose in the prior art a sleeve of elastic. Kas³ disclose in the prior art a sleeve with indicia.

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Jeffrey L. Gellner whose phone number is 703.305.0053 (after 4 April 2005 use: 571.272.6887). The Examiner can normally be reached Monday through Thursday from 8:30 am to 4:00 pm. The Examiner can also be reached on alternate Fridays.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's Supervisor, Peter Poon, can be reached at 703.308.2574. The official fax telephone number for the Technology Center where this application or proceeding is assigned is 703.872.9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703.308.1113.



Jeffrey L. Gellner

Primary Examiner